TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1277. ~~345~~ 263

THE SCHOONER "COMET," HER TACKLE, &c., W. H. ALDRICH, MASTER, &c., APPELLANT,

vs.

D. S. STETSON AND COMPANY, OWNERS OF THE SCHOONER "JOHN J. TAYLOR," AND BOLTON, BLISS AND DALLETT, OWNERS OF THE CARGO OF THE SCHOONER "JOHN J. TAYLOR."

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED NOVEMBER 6, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 THE UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1885, before the Honorable Hugh L. Bond, circuit judge of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

UNITED STATES OF AMERICA, *District of South Carolina:*

Circuit Court, Fourth Circuit. In Admiralty.

D. S. STETSON *et al.*, Owners of Schooner "John J. Taylor" and Bailees of Cargo of said Schooner "John J. Taylor," Libellants,

against

2 THE "COMET," Respondent, *ex parte* BOLTON, BLISS, and DALLETT, Owners of Cargo of Schooner "John J. Taylor," Intervening Libellants.

Be it remembered that heretofore, to wit, on the 21st day of April, in the year of our Lord one thousand eight hundred and eighty-five, came into court the libellants and respondent, by their proctors, Bryan and Bryan, proctors for Stetson *et al.*, libellants; Simonton and Barker, proctors for schooner "Comet," and G. M. Trenholm, proctor for owners of cargo, and filed the following agreement; which agreement is in the words and tenor following:

Agreement.

To facilitate an appeal and a hearing a decree *pro forma* having been signed in district court in the cases above named, and the cases set for hearing on appeal in circuit court, and time not being had to have the formal appeal record prepared from the district court
3 and to have formal notice of appeal served and apostles and stipulation deposited in circuit court:

Now, therefore, it is agreed between proctors for libellants, intervening libellants, and respondent-claimant herein that no exception shall be taken on either side because of any of the omissions referred to, or any other formal objection.

That these cases shall be heard upon the records, proof, and pleadings of the district court, and that all proper notices to transfer cause to circuit court be considered filed, and be prepared and filed *nunc pro tunc* hereafter, together with the regular appeal, record, &c., and all other things done *nunc pro tunc* in the district and circuit court

to perfect appeal and put said causes in formal shape for hearing as of this date in circuit court.

21 April, 1885.

BRYAN & BRYAN,
Proctors for Stetson et al., Libellants.
SIMONTON & BARKER,
For Schooner "Comet."
G. M. TRENHOLM,
Proctor for Owners of Cargo.

4 & 5 And on the 3d day of June, A. D. 1885, came into court the respondent, the master of the schooner "Comet," by his proctors, Simonton and Barker, and filed the following apostles, which apostles are in the words and tenor following:

No. 1.

Apostles.

THE UNITED STATES OF AMERICA, *District of South Carolina:*

In Admiralty.

At a district court of the United States in and for the district aforesaid, begun and holden at Charleston, in the district aforesaid, on the first Monday of January, A. D. 1885, before the Hon. George S. Bryan, judge of the United States district court for South Carolina, holding said district court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

6 *Libel for Damages by Collision.*

D. S. STETSON & Co. *et al.* Owners of the Schooner "John J. Taylor," Libellants,
against
THE SCHOONER "COMET."

Be it remembered that heretofore, to wit, on the 27th day of September, 1884, the said D. S. Stetson & Co. *et al.*, owners of the schooner "John J. Taylor," came into court, by their proctors, Messrs. Bryan & Bryan, and filed their libel against the schooner "Comet" for damages by collision, which libel is in words and of the tenor following:

No. 2.

Libel.

UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In Admiralty.

To the honorable the judge of the district court of the United States for the eastern district of South Carolina:

7 The libel of D. S. Stetson, R. J. Winsmore, and James N. Stetson, copartners, doing business under the firm name of

D. S. Stetson & Company, managing owners of the schooner "John J. Taylor," and Thomas Winsmore and R. J. Winsmore, as executors of R. H. Winsmore, deceased, Thomas Winsmore in his own right, and R. J. Winsmore in his own right, Daniel H. Foster, John B. Cutler, A. H. Cain, S. W. Clark, M. J. Reed, John Welsh, and Margaret Taylor, and others, owners of the schooner "John J. Taylor," as such owners, on their own behalf and on behalf of other owners, and as bailees of the cargo of the said schooner "John J. Taylor" against the schooner "Comet," whereof W. H. Aldrich is or lately was master, her tackle, apparel, and furniture, and against all persons intervening for their interest in the said vessel in a cause of collision, civil and maritime, alleges as follows:

First. That your libellants and others, before and at the time of the collision hereinafter mentioned, were the owners and proprietors of a certain schooner called the "John J. Taylor," with her
8 tackle, apparel, and furniture, and as such owners were bailees for hire and in possession of the cargo of said schooner, consisting of an under and an on deck cargo of yellow pine lumber.

Second. That on the 11th day of September the said schooner John J. Taylor, Thomas Mumford, departed the port Fernandina, Florida, having on board the said schooner the said cargo and bound for the port of La Guayra, Venezuela, and thereafter, on the fifteenth day of September, 1884, at half past two o'clock in the morning (2.30 a. m.), the said schooner then being in latitude — longitude —, Atlantic Ocean, and laying too-close, reefed, under foresail, was run down upon and run into by the said schooner "Comet," the said schooner Comet coming down upon her before the wind and showing no lights, crushing in the top sides of the said John J. Taylor abaft the fore chains, rebounding and striking the said John J. Taylor again abaft the main chains, and again striking the said John J. Taylor in the center of the after-house, the said John J. Taylor being then and there at and before such collision tight,
9 staunch, strong, and — every respect well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men, and that the master and crew engaged on board were on the lookout for the protection and safety of the vessel.

Third. That in consequence of said collision the said schooner John J. Taylor sprung aleak, filled rapidly, and thereupon became water-logged, a total wreck on the high seas, and incapable of navigation, in which condition said schooner drifted until the 18th day of September, 1884, on which day she was abandoned by the master and crew on the high seas, they being rescued by the steamship Cienfuegos, bound for New York.

Fourth. That the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of said schooner "Comet," her master and crew, and not from any fault, omission, or neglect on the part of the said John J. Taylor, her master and crew.

Fifth. That the libellants, in consequence of said collision, have sustained damage as owners of said vessel, the John J. Taylor,

10 for the total loss and destruction of the said schooner John J. Taylor, freight advances and otherwise, to the amount of fifteen thousand dollars, and as bailees of said cargo aforesaid have sustained damages for the total loss and destruction of the said cargo and otherwise to the amount of thirty-five hundred dollars, all of which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said vessel, the "Comet," and not by or through any fault, negligence, or improper conduct on the part of the persons on board the said John J. Taylor, her master or crew.

Sixth. That since the collision these libellants have applied to A. Dayton & Co. and others, of New York city, where said vessel belongs, and to owners of said vessel, as these libellants believe and are informed, and requested them to settle with these libellants for the damages sustained by them as aforesaid, but they deny that there is any liability on the part of the schooner "Comet" for the said damages or any part thereof.

Seventh. That the said schooner "Comet" is now lying in
11 the port of Charleston, and within the jurisdiction of this court.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said schooner "Comet," her tackle, apparel, and furniture, and that all persons claiming any right, title, or interest in the said vessel may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable court may be pleased to decree the payment of their aforesaid damages, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

D. S. STETSON.

BRYAN & BRYAN,
Libellants' Proctors.

12 On the 27th day of September, 1884, personally appeared D. S. Stetson, of the firm of D. S. Stetson & Co., libellants, and was sworn to the truth of the foregoing libel.

Sworn to before me this 27th day of September, 1884.

J. E. HAGOOD,
U. S. Commissioner, Dist. of S. C.

No. 3.

Warrant of Arrest.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the Court of Admiralty of the United States of America for South Carolina District.

The United States of America to the marshal of the court of admiralty for the district aforesaid or to his lawful deputy, Greeting:

You are hereby commanded, without delay, to arrest the Schooner "Comet," W. H. Aldrich, now or late master, in
13 whose possession soever she may be found within the jurisdiction of this said court, and to cite W. H. Aldrich, master, and all other persons whomsoever having or pretending to have any right, title, claim, or interest therein, to be and appear before the Hon. Geo. S. Bryan, the judge of the said court, at the court-house in Charleston, on Tuesday 11 a. m., October 7th, 1884, to answer the libel of D. S. Stetson & Co. *et al.*, filed the 27th day of September, 1884, in a certain cause of admiralty jurisdiction.

Witness Hon. George S. Bryan, judge of the court, at Charleston, the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the sovereignty and Independence of the United States of America the 109 year.

[L. S.] E. M. SEABROOK.
C. D. C. U. S., S. C.

BRYAN & BRYAN,
Libellants' Proctors.

No. 4.

CHARLESTON, *Sept. 27th*, 1884.

I hereby certify that I executed the within process by serving a copy of the within on the first mate of the schooner "Comet," Geary Nolan, in the absence of the master of the "Comet," on this day, and also posted a copy on the mainmast of said schooner and took her into custody.

14 W. D. HANNIFIN,
Deputy U. S. Marshal.

No. 5.

Libel in Rem.

UNITED STATES OF AMERICA,
E. District Court of South Carolina:

District Court. In Admiralty.

D. S. STETSON & Co. *et al.*, Owners of Schr. John J. Taylor, &c., Libellants,

v.

SCHR. "COMET," W. H. Aldrich, Master.

It is agreed by and between the parties hereto that the value of the said schooner "Comet" be fixed by consent (without formal appraisement) at eight thousand dollars.

2d October.

SIMONTON & BARKER,
Proct's for Respond'ts.
BRYAN & BRYAN,
Libellants' Proctors.

15 No. 6.

UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In District Court. In Admiralty.

D. S. STETSON & Co. *et al. vs.* SCHOONER "COMET."

To the Honorable George S. Bryan, judge of the district court of the United States for the district of South Carolina:

Wm. H. Aldrich, owner, master, and agent of owners of the schooner "Comet," and others, as per schedule endorsed hereon, owners of schooner Comet, her tackle, apparel, and furniture, intervening for their interest in the said schooner Comet, her tackle, apparel, and furniture, appear before this honorable court and claim the said schooner, her tackle, apparel, and furniture, and state that they are true and *bona fide* owners thereof, and that no other person is the owner thereof.

And thereupon the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

16 W. H. ALDRICH,
Master & Ag't for Owner-.

Sworn to before me this 2d day of October, 1884.

[SEAL.] WM. J. GAYER,
U. S. Com'r.

Schedule of Owners of Schooner "Comet."

W. H. Aldrich, $\frac{1}{32}$; Charles A. Bayles, $\frac{3}{64}$; James M. Bayles and James E. Bayles, copartners, $\frac{2}{64}$; S. Tabor Bayles, $\frac{4}{64}$; W. Dickerson, $\frac{4}{64}$; Sylvester D. Tuttle, $\frac{1}{64}$; Francis S. Woodhull, $\frac{4}{64}$; Wines Emons, $\frac{2}{64}$; Jos. Hammond, $\frac{2}{64}$; Mary Hulse, $\frac{2}{64}$; John J. Woodhull, $\frac{2}{64}$; Elbert Woodhull, $\frac{2}{64}$; Elbert A. Raynor, $\frac{2}{64}$; Geo. H. Smith, $\frac{2}{64}$; Scudder Jayne, $\frac{2}{64}$; Wm. B. Drayton, $\frac{1}{64}$; Herman Scudder, $\frac{1}{64}$; James E. Hulse, $\frac{1}{64}$; Annie Hulse, $\frac{1}{64}$; James Drayton, $\frac{2}{64}$; B. F. Jayne, $\frac{1}{64}$; Gilbert H. Wilson, $\frac{2}{64}$; John Griffin, $\frac{2}{64}$; A. Dayton and J. C. Dayton, copartners as Dayton & Co., $\frac{4}{64}$; Stephen H. Mills, $\frac{4}{64}$; H. K. White, $\frac{1}{64}$; Chas. A. Pierson, $\frac{1}{64}$; Edward H. Jones, $\frac{1}{64}$.

17 And on the 9th day of October, A. D. 1884, the master of the said schooner "Comet," in behalf of himself and the owners of the schr. "Comet," came into court, by his proctors, Messrs. Simonton & Barker, and filed his claim and answer to the libel of D. S. Stetson & Co. *et al.*, owners of schr. John J. Taylor, which answer is in words and of the tenor following:

No. 7.

Answer.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the District Court. In Admiralty.

D. S. STETSON & Co. *et al.*, Owners of the Schooner John J. Taylor,

vs.

THE SCHOONER "COMET."

The answer and claim of W. H. Aldrich, master of the schooner "Comet," intervening for the interest of himself and the other owners of schooner "Comet," to the libel and complaint of D. S. Stetson & Co. and others, owners of the schooner John J. Taylor, alleges as follows:

1. That of the matters and things set forth in the first, second, third, and fifth paragraphs of said libel and complaint, this respondent has no knowledge whatever.

18 2. That the only facts known to him occurring on his recent voyage which in any way resemble the statement of the libel are these: While his schooner was in the Atlantic Ocean, about the 15th September, 1884, under command of this respondent, he encountered a severe hurricane and gale accompanied with heavy rain; that during the morning of the 15th September, about 2 a. m., the hurricane continuing to blow so that he could carry no sail whatever, and his vessel scudding under bare polls before the gale, she struck some vessel, to this respondent unknown, with what result this respondent does not know, as the gale, continuing and increasing in violence, carried her away from the vessel with which she collided, which respondent never saw again.

3. That he denies the allegation of the fourth paragraph; on the contrary, he avers that from the beginning of the gale to the end and before and at the time of his collision with the unknown vessel every possible precaution was taken by him and his crew to avoid accidents; that during this night of September 15th he was on deck himself all night, had his watch and his lookout on duty, put up his
19 lights in the rigging many times and had them extinguished by the action of the gale, and that at the moment of his collision the lights were lit on deck; that neither he nor his lookout nor any of his crew saw any vessel until the instant of collision and too late to prevent it, nor heard any hail nor saw any light whatever.

4. That he admits the allegations of the 6th and 7th paragraphs so far only as the denial of the liability of the Comet is concerned, and that the schooner is in the port of Charleston.

5. That all and singular the premises are true, and he prays that his vessel be restored to him and the libel be dismissed.

SIMONTON & BARKER,
For Respondent.

STATE OF SOUTH CAROLINA, *County of Charleston:*

Before me personally appeared W. H. Aldrich, master of the schooner Comet, who, being duly sworn, says that the above answer is true.

W. H. ALDRICH.

Sworn to before me this 9th day of Oct., 1884.

[SEAL.] W. HUGER FITZSIMMONS,
Not. Pub., S. C.

20 No. 8.

Libel in rem. Collision.

UNITED STATES OF AMERICA.
Eastern District of South Carolina:

In District Court. In Admiralty.

D. S. STETSON *et al.*, Owners of Schooner "John J. Taylor," Libellants,
against
THE SCHOONER "COMET," Respondent.

On motion of libellants' proctors, and with consent of respondent's proctors, it is ordered that it be referred to E. M. Seabrook, Esq., commissioner in admiralty of the court, to take and report to this court any further testimony herein.

3d March, 1885.

GEO. S. BRYAN,
U. S. Judge, Dist. S. C.

We consent.
11th March, 1885.

SIMONTON & BARKER.

On the 13th day of March, A. D. 1885, came into court D. S. Stetson *et al.*, libellants, by their proctors, Messrs. Bryan & Bryan, and filed their supplemental libel against the schooner "Comet," which libel is in words and of the tenor following:

21 *Supplemental Libel in rem. Collision. Original Libel Filed 22d Sept.*, 1884.

UNITED STATES [OF] AMERICA,
Eastern District of South Carolina:

In District Court. In Admiralty.

D. S. STETSON *et al.*, &c., Libellants,
against
THE SCHOONER "COMET."

The supplemental libel herein alleges:

First. That since the filing of the original libel herein the said schooner "John J. Taylor," eighteen days after her abandonment as derelict wreck on the high seas, as in said original libel alleged, was, on or about the sixth day of October, 1884, picked up as such derelict wreck on the high seas in lat. —, long. —, and, together with a portion of her cargo, damaged, remaining in her hold, was salved by the steamship Ixia, bound from the port of —— to the port of Savannah, Ga., and as such derelict wreck was brought into said port of Savannah, Ga., arriving there in tow of said steamship on the
22 eighth day of October, 1884.

Second. That immediately upon the arrival of said derelict wreck of schooner John J. Taylor in Savannah, as aforesaid, your libellants called a board of survey upon her, by whom the said schooner was condemned as unworthy of repair, and was valued by said board, as she then and there laid, on the 13th day of October, 1884, at the sum of four hundred dollars.

Third. That thereupon, on the 15th day of October, 1884, the said schooner "John J. Taylor," was, with the portion of cargo remaining in her damaged, libelled for salvage in the district court of the United States for the southern district of Georgia at the suit of the said steamship Ixia and owners, and upon the said suit being duly defended by these libellants as claimants, the said court decreed a moiety of such salved vessel and cargo to the salvor therein as salvage award.

Fourth. That on the 3d day of November, 1884, the said schooner and cargo was sold by the marshal of said court at public auction in the city of Savannah, under decree of said court and in said salvage suit, due notice of such decree and sale having been
23 first given by these libellants herein to the respondents and claimants in this suit, at which said sale the schooner was knocked down at and for the bid of five hundred dollars; and the said cargo remaining was knocked down at and for the bid of twelve hundred and ninety-three $\frac{13}{100}$ dollars; and, after the payment of costs and expenses of such proceedings, and the payment of the

moiety of such proceeds, as directed by said decree, to said salvor, there was paid to claimants therein on account of said schooner "John J. Taylor" the sum of one hundred and ninety-eight $\frac{82}{100}$ dollars, and on account of said remaining cargo in said schooner the sum of five hundred and sixteen $\frac{18}{100}$ dollars.

Fifth. And your libellants allege and claim damages, as alleged and claimed in original libel herein, to the full value of the said schooner John J. Taylor and cargo at the time of said collision, together with freight and advances and interest, subject only to the credits of the said sum [of] one hundred and ninety-eight $\frac{82}{100}$ dollars so received on account of the said schooner "John J. Taylor" and the sum of five hundred and sixteen $\frac{18}{100}$ dollars so received on
24 account of the said cargo of said schooner in the salvage suit aforesaid.

Wherefore libellants pray that said libel be amended by these supplemental allegations herein contained, and pray such other and further relief as to law and justice shall appertain.

D. S. STETSON.

BRYAN & BRYAN,
Libellants' Proctors.

Sworn to before me this 12th day of March, 1885.

E. M. SEABROOK,
C. D. C., U. S., S. C.

And on the 4th day of April, A. D. 1885, came into court Boulton, Bliss & Dallett, by their proctor, Geo. M. Trenholm, Esq., and filed their intervening libel against the schooner "Comet," which libel is in the words and of the tenor following:

No. 10.

Intervening Libel.

UNITED STATES [OF] AMERICA,
Eastern District of South Carolina:

25 In the District Court. In Admiralty.

In re D. S. STETSON *et al.*, Libellants,

v.

THE SCHOONER "COMET."

Libel *in rem* for collision.

The intervening libel of Boulton, Bliss & Dallett (a copartnership consisting of Wm. George Boulton, William Bliss, and George Dallett and Earnest Clarence Bliss, and doing business in the city of New York), owners of the cargo of the schooner "John J. Taylor," on the 15th day of September, 1884, against the schooner "Comet," her tackle, apparel, and furniture, and all other persons intervening

for their interest therein, in a cause of collision and damage, on their own behalf and for their own interest in said cause above mentioned, allege- as follows:

First. That your intervening libellants were, and at the time of the collision hereinafter mentioned, owners and shippers of the cargo of yellow pine lumber of a certain schooner "John J. Taylor," the said cargo being on and under deck of said schooner "John J. Taylor," which departed the port of Fernandina, Florida, on the 11th day of September, 1884, bound for the port of La Guayra, Venezuela.

Second. That thereafter, on the fifteenth day of September,
26 1884, at half past two o'clock in the morning, about (2.30 a. m.), the said schooner, then being [in] latitude —, longitude —, Atlantic Ocean, and laying to close-reefed under foresail, was run down upon and run into by said schooner "Comet," coming down upon her before the wind and showing no lights, crushing in the top sides of the said schooner "John J. Taylor" abaft the fore chains, rebounding, and striking the said "John J. Taylor" again abaft main chains, and again striking the said "John J. Taylor" in the centre of the abaft house, the said John J. Taylor being then and there, at and before such collision, tight, staunch, strong, and in every respect well manned, tacked, and apparelled, and having the usual and necessary compliment of officers and men, and that the master and crew engaged on board were on the lookout for the protection and safety of the vessel.

Third. That in consequence of said collision the said schooner John J. Taylor sprang aleak, filled rapidly, and thereupon became water-logged. The deck cargo was cut loose for safety of crew and was totally lost, and the vessel, as a total wreck on the high seas, incapable of navigation, drifted until the eighteenth day of
27 September, 1884, on which day she was abandoned by the master and crew on the high seas, they being rescued by the steamship "Cienfuegos," bound for New York from Havana.

Fourth. That thereafter the said schooner, with her remaining cargo in the hold, was picked up on the high seas as a derelict wreck, eighteen days after her abandonment, and salved by the steamship "Ixia," bound for the port of Savannah, Ga., and on the 8th day of October, 1884, she was by said steamship towed into said port, where said vessel and cargo were, on the 15th day of October, 1884, libelled for salvage by said steamship "Ixia" and owners, and on the 3d day of November, 1884, said vessel and cargo were, after due notice to respondents herein, sold separately under decree of the district court of the United States for the southern district of Georgia, the said cargo being knocked down at and for the bid of twelve hundred and ninety-three $\frac{13}{100}$ dollars, and, after the payment of court and expenses and moiety of salvage awarded, the sum of five hundred and sixteen $\frac{18}{100}$ dollars was received in such suit by your libellants as claimants on account of said cargo.

28 That the said cargo was worth and valued at the port of shipment, at the time of shipment, [at] the sum of three thousand one hundred and fifty-two dollars.

That the deck load of the same was wholly lost, and that the portion remaining in the hold of such derelict wrecked vessel brought into the port of Savannah, as foresaid, was greatly damaged by long soaking in salt water, and thereby badly stained and blackened.

That the collision aforesaid was caused by the negligence in attention and want of proper care and skill on the part of the said schooner Comet, her master and crew, and not from any fault, omission, or neglect on the part of the said John J. Taylor, her master and crew.

That the intervening libellants, in consequence of said collision, have sustained damage as owners of said cargo in the sum of three thousand and five hundred dollars, the same being amount of the value of such cargo aforesaid at the port of shipment, together with interest thereon at six per cent. per annum on such value, and the charges of lading, insurance, and transportation of the same,
29 from which amount of damages is to be deducted the sum of five hundred and sixteen $\frac{18}{100}$ dollars, received on account of said cargo in said salvage suit aforesaid, all of which damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said vessel, the "Comet."

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

Wherefore the libellants intervening pray that they may be allowed to intervene herein for their own interest and in their own behalf and right, and that their claim of damages, as aforesaid, may be decreed to be paid out of the security representing said vessel as bail and stipulation in this court, and for their own further interest in their own right as to law and justice may appertain.

WILLIAM BLISS.

G. M. TRENHOLM,
Proctor for Libellants Intervening.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania:

William Bliss, one of the intervening libellants, being duly sworn according to law, deposes and says that the facts set forth
30–176 in the foregoing libel of intervention are true to the best of his knowledge and belief.

WILLIAM BLISS.

Sworn & witnessed to before me the 16th day of March, A. D. 1885.
[SEAL.] CHARLES GIBBONS, JR.,
United States Commissioner.

(Pp 30 to 176, incl., being statement of testimony, omitted in printing.)

177 And on the 16th day of April, A. D. 1885, the said cause came on for trial, [and], by consent of the proctors, a decree *pro forma* was made in words and of the tenor following:

No. 12.

Decree Pro Forma.

UNITED STATES [OF] AMERICA,
Eastern District [*of*] *South Carolina:*

District Court. In Admiralty.

D. S. STETSON *et al.*, Owners of the Schooner John J. Taylor and Bailees of Cargo of said Schooner, Libellants,

against

THE SCHOONER COMET, Respondent.

In re THE SAME *ex parte* BOLTON, BLISS & DALLETT, Owners of the Cargo of Schr. John J. Taylor, Intervenors, Libellants.

Libel *in rem.* Collision.

On hearing the pleading and proofs in these cases, and a
178 decree *pro forma* being moved by proctors herein respectively—

It is now ordered, adjudged, and decreed that the libel of the parties, libellants and intervening libellants, be sustained, and the schooner "Comet," respondent herein, be condemned as in sole fault of such collision.

It is further ordered that the libellants, owners of the schooner John J. Taylor, and Bolton, Bliss & Dallett, intervening libellants, owners of cargo of schooner "John J. Taylor," do have judgment against the stipulators for schooner Comet herein for their damages, as claimed, and costs to be taxed, and that the said stipulation for schooner "Comet" in the sum of eight thousand dollars be divided among libellants and intervening libellants in the rates of their respective damages, as claimed.

April 16th, 1885.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

We consent.

SIMONTON & BARKER,
For "Comet."
BRYAN & BRYAN,
For Libellants.

179 No. 13.

Clerk's Bill of Costs.

Filing libel, .10; issuing warrant, 1.00		$1 10
Filing & ent. return, .25; copy of libel for Mr. Simonton, 2.00		2 25
Filing agreement as to value, .10; filing claim of owner, .10		20
Filing claim & answer, .10; filing order of reference, .10		20
Ent. same, .15; filing supplemental libel, .10		25
Filing intervening libel, .10; filing decree, .10		20
Ent. same, .45; docket, 3.00; filing testimony, 5 pieces, @ 10c., .50		3 95
Taxing costs, 1.00; copy of bill of costs, 1.00		2 00
Certifying record to circuit court, 366 fol., @ 10c.		36 60
Cert. & seal, .35; filing stipulation, .10		45
		$47 20
As commissioner:		
1 day's attendance at reference	$3 00	
Swearing 1 witness	10	
Swearing stenographer	10	
Certifying deposition to file, 26 fol., @ 20c.	5 20	
Copy for Mr. Simonton, 2.60; copy for Mr. Bryan, 2.60	5 20	
		13 60
		$60 80

May 30, 1885.

The costs of proctors and U. S. marshal will have to be ascertained at a reference for that purpose.

180 No. 14.

THE UNITED STATES OF AMERICA, *District of South Carolina:*

U. S. District Court.

CLERK'S OFFICE.

I, Ephraim M. Seabrook, clerk of the said court, do hereby certify that the foregoing one hundred and sixty-eight pages of written matter do contain a true transcript of the proceedings now on file in my office in the case of D. S. Stetson & Co. *et al.*, owners of the schooner John J. Taylor, libellants, against the Schooner Comet, libel for collision.

Witness my hand and the seal of the said court, at Charleston, S. C., this thirtieth (30th) day of May, A. D. 1885.

[SEAL.] E. M. SEABROOK,
C. D. C. U. S. for S. C.

181 And on the 22d day of April, A. D. 1885, this cause came up for hearing before the Honorable Hugh L. Bond, circuit judge, on appeal from the district court, when the pleadings were read, and after argument by J. P. K. Bryan, Esq., and G. A. Treuholm, Esq., on behalf of libellants, and by C. H. Simonton, Esq., on behalf of respondent, the court took the case under advisement.

182 And on the 25th day of April, A. D. 1885, came into court the libellants, D. S. Stetson & Co. *et al.*, by their proctors, Bryan & Bryan, and filed the following order of reference, which order is in the words and tenor following:

Order.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court. In Admiralty.

D. S. STETSON *et al.*, Owners of Schooner "John J. Taylor," Libellants.
against
THE SCHOONER "COMET," Defendant.

On motion of libellant's proctors it is ordered, that it be referred to J. E. Hagood, Esq., as commissioner of this court, to examine and report to this court the amount of damages sustained by libellants, owners of schooner "John J. Taylor," and intervening libellants, owners of cargo of schooner "John J. Taylor," under opinion in above cause, filed the 25th April, 1885.

25 April, 1885.

HUGH L. BOND, *C't Judge.*

183 And on the 25th day of April, A. D. 1885, the court filed the following finding of facts, which finding of facts is in the words and tenor following:

Finding of Facts.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

D. S. STETSON & Co., Owners of Schooner John J. Taylor *et al.*, Libellants,
vs.
THE SCHOONER COMET, Respondents.

Appeal in admiralty.

On the morning of the 15th Sept., 1884, about 2.30 a. m., about latitude 30 longitude 75, the three-masted schooner John J. Taylor, owned by libellants, Stetson *et al.*, with a cargo of lumber, owned by intervenors, Bolton, Bliss and Dallett, bound on a voyage from Fer-

nandina, Florida, to the port of La Guayra, was laying to under a double-reef foresail sheet half off, heading northwest by north, making no headway, but drifting leeward two miles and a
184 half an hour. The wind was northeast by north, blowing a severe gale; almost a hurricane. She had her proper lights set and proper lookout. The night was exceedingly dark and the rain very heavy in squalls; when she was collided with by the three-masted schooner Comet, bound from New York to Cedar Keys, Florida.

The Comet was scudding under bare poles and going at the rate of seven miles an hour. She had no lights in her rigging, the severity of the gale and the shaking of the rigging preventing them from burning, but they were placed on deck, which deck had a bulwark around it twenty-eight inches high.

None of the crew of the Comet saw the Taylor till the instant of collision, but some of the crew of the Taylor saw the Comet a half a mile off. The Comet struck the Taylor on the starboard side, just abaft the fore-chain plates, crushing in her starboard side, making a deep hole in her, and then, rebounding, struck her again about the main chains, and then, the third time, lightly farther aft. The Taylor immediately filled and became water-logged, and drifted for three days, when her crew was rescued by a steamer from Havana to New York.

185–189 The Taylor was derelict and was salved by the steamship Ixia, bound for Savannah, where she was sold by the decree of the district court of Georgia, with that part of her cargo not washed overboard. The place of collision was in the direct course of vessels from New York to Havana and New Orleans, and a much frequented route both by steamers and sailing vessels. After the collision the Comet lay to in safety, and was found in the port of Charleston and libelled.

The court finds that it was gross negligence in the Comet to scud at the rate of seven miles an hour without lights in the frequented pathway of vessels; that she should have laid to as the Taylor did, for she had every reason to suppose that each vessel encountering the storm would be without lights as she was.

The loss to the Taylor was —— and to the cargo ——.

The court finds the law to be that as the collision resulted from the carelessness and bad seamanship of those navigating the Comet she must bear the loss of both the Taylor and her cargo, and a decree will be passed accordingly.

Ap'l 25, 1885.

HUGH L. BOND, *C't Judge.*

(Pp. 186 to 189, incl., being report of testimony, omitted in printing.)

190 And on the 5th day of December, A. D. 1885, came into court J. E. Hagood, commissioner, and filed the following report on damages to schooner "John J. Taylor" and cargo, which report is in the words and tenor following:

Report.

UNITED STATES [OF] AMERICA, *District of South Carolina:*

Circuit Court. In Admiralty.

D. S. STETSON *et al.*, Libellants, *v.* THE SCHOONER "COMET."

THE SAME *ex parte* BOLTON BLISS, & DALLETT, Intervening Libellants,

v.

THE SCHOONER "COMET."

Libel *in rem.* Collision.

To the circuit court of the United States for the district of South Carolina:

This cause was referred to me under the order of the 25th day of April, 1885, of this court to examine and report the dam-
191 ages herein in this case, first, to the schooner "John J. Taylor," and next to the cargo of the said schooner "John J. Taylor."

I respectfully report that I have taken the testimony hereto annexed, and I report as the amount of damage and loss sustained by the schooner "John J. Taylor" the sum of six thousand dollars, and I report as the amount of damage and loss to cargo of the said schooner "John J. Taylor" is two thousand dollars in the collision, and under the principles of decree and opinion of this court of 25 day of April, 1885.

December 5, 1885. J. E. HAGOOD,
Commissioner.

And on the 5th day of December, A. D. 1885, his honor Hugh L. Bond, circuit judge, after hearing the report of commissioner and argument of counsel, filed the following decree, which decree is in the words and tenor following:

Decree.

UNITED STATES [OF] AMERICA, *District of South Carolina:*

Circuit Court. In Admiralty.

192 D. S. STETSON *et al.*, Owners of the Schooner "John J. Taylor," Libellants,

v.

SCHOONER "COMET."

THE SAME *ex parte* BOLTON, BLISS & DALLETT, Owners of the Cargo "John J. Taylor," Intervening Libellants,

v.

THE SCHOONER "COMET."

Libel *in rem.* Collision.

This cause having been on 25th April, 1885, referred to the commissioner to examine and report the amount of damage to the cargo and the schooner "John J. Taylor," respectively, and his report being filed this fifth day of December, 1885, by which there is reported as damage to the cargo the sum of two thousand dollars, and as damage to the vessel "John J. Taylor" the sum of six thousand dollars:

Now, upon hearing the same, and argument of proctors, respectively, thereon, on motion of proctors for libellants, it is or-
193 dered that the report in all things be confirmed, and that the defendant pay to the libellants, D. S. Stetson *et al.*, owners of the said schooner "John J. Taylor," the sum of six thousand dollars, together with his costs, to be taxed; and that the defendant pay to intervening libellants, Bolton, Bliss & Dallett, owners of the cargo, the sum of two thousand dollars, the amount so reported due to him, together with his costs, to be taxed.

On like motion, it is further ordered that a summary judgment be, and the same is hereby, entered against the said J. A. Aldrich, the principal, and J. J. Molony, Frank Kressel, Jr., and M. O. Connor, the sureties, for the sum of six thousand dollars in favor of D. S. Stetson *et al.*, libellants; and that a summary judgment be, and the same is hereby, entered against the said J. A. Aldrich, the principal, and J. J. Molony, Frank Kressel, Jr., and M. O. Connor, the sureties, for the sum of two thousand dollars in favor of Bolton, Bliss & Dallett, intervening libellants, and that the libellants, D. S. Stetson *et al.*, and the intervening libellants, Bolton, Bliss & Dallett, have execution thereon to satisfy this decree against said principal and sureties on the bond and stipulation for said vessel, the "Comet," and for costs.

December 5th, 1885.

HUGH L. BOND, *C't Judge.*

194 And on the 5th day of December, A. D. 1885, the respondents came into court, by their proctors, Simonton & Barker, and prayed an appeal from the decree in this cause, which appeal was allowed by the court.

And on the 3d day of Feb'y, A. D. 1886, came into court the respondents, by their proctors, Simonton & Barker, and filed the following appeal bond, which appeal bond is in the words and tenor following.

Appeal Bond.

Circuit Court of the United States of America, Eastern District of South Carolina, in the Fourth Circuit.

THE SCHOONER COMET, Her Tackle, Apparel, and Furniture, and W. H. Aldrich, Master of the Schooner Comet, Claimants and Appellants,

vs.

D. S. STETSON & Co. and Others, Owners of the Schooner John J. Taylor, Libellants and Appellees.

195 THE SAME

vs.

BOLTON, BLISS & DALLETT, Owners of the Cargo of the Schooner John J. Taylor, Libellants and Appellees.

Know all men by these presents that we, Benjamin F. Jayne, Charles A. Pierson, Gilbert H. Wilson, John Griffin, Stephen H. Mills, James Dayton, William B. Dayton, and James E. Bayles, are held and firmly bound unto the above-named D. S. Stetson, R. J. Winsmore, and James N. Stetson, copartners doing business under the firm name of D. S. Stetson & Company, managing owners of the schooner John J. Taylor, and Thomas Winsmore and R. J. Winsmore, as executors of R. H. Winsmore, deceased, Thomas Winsmore in his own right and R. J. Winsmore in his own right, Daniel H. Foster, John B. Cutler, A. H. Cain, S. W. Clark, M. J. Reed, John Welsh, and Margaret Taylor, and others, owners of the schooner John J. Taylor, and Boulton, Bliss & Dallett (a copartnership consisting of William George Boulton, William Bliss, and John Dallett and Ernest Clarence Bliss, and doing business in the city of New York), owners of the cargo of the schooner John J. Taylor,
196 in the sum of five thousand dollars, to be paid to the said appellees; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 25th day of January, in the year of our Lord one thousand eight hundred and eighty six.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suits by the circuit court of the United States for the eastern district of South Carolina:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and

answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

BENJAMIN F. JAYNE, [SEAL.]
Setauket, New York.
CHARLES A. PIERSON, [SEAL.]
Binghampton, New York.
197 GILBERT H. WILSON, [SEAL.]
176 *South St., N. Y.*
JOHN GRIFFIN, [SEAL.]
518 *Pacific St., B'klyn.*
STEPHEN H. MILLS, [SEAL.]
178 *Kiofo St., Brooklyn, N. Y.*
JAMES DAYTON, [SEAL.]
Port Jefferson, N. Y.
WM. B. DAYTON, [SEAL.]
Port Jefferson, N. Y.
JAMES E. BAYLES, [SEAL.]
Port Jefferson, N. Y.

Sealed and delivered and taken and acknowledged the 25th January, by Jayne and Pierson, and the 26th January, by Wilson and Griffin, and this 27th day of January, 1886, by all the others before me—

[SEAL.] TIMOTHY GRIFFITH,
Clerk U. S. Circuit Court, Southern Dist. of New York.

198 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Benjamin F. Jayne, Charles A. Pierson, Gilbert H. Wilson, John Griffin, Stephen H. Mills, James Dayton, William B. Dayton, and James E. Bayles, each being duly sworn, deposes and says, and each for himself saith, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

BENJAMIN F. JAYNE.
CHARLES A. PIERSON.
GILBERT H. WILSON.
JOHN GRIFFIN.
STEPHEN H. MILLS.
JAMES DAYTON.
WM. B. DAYTON.
JAMES E. BAYLES.

Sworn to before me the 25th by Jayne and Pierson; the 26th day by Wilson and Griffin, and on 27th day of January, 1886, by the others.

[SEAL.] TIMOTHY GRIFFITH,
Clerk U. S. Circuit Court, Southern Dist. of New York.

I approve the above bond and the sufficiency of the sureties thereto.

Feb'y 3, 1886.

HUGH L. BOND,
C't Judge.

199 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the Circuit Court.

I, J. E. Hagood, clerk of the said court, do hereby certify that the foregoing is a true and correct copy of the records, proceedings, and of the decree in the case of D. S. Stetson & Co., *et al.*, libellants, against the Schooner "Comet," respondent, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of said court at clerk's office, in the city of Charleston, S. C., this the 2 day of August, A. D. 1886.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: South Carolina C. C. U. S. No. 1277. The Schooner "Comet," her tackle, &c., W. H. Aldrich, master, &c., appellant, *vs.* D. S. Stetson & Company, owners of the schooner "John J. Taylor," & Bolton, Bliss & Dallett, owners of the cargo, of the schooner "John J. Taylor." Filed November 6, 1886.